

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN BRIAN YOUNG,

Defendant-Appellant.

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UNPUBLISHED

March 11, 2008

No. 275881

Wayne Circuit Court

LC No. 06-009726-01

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of felonious assault, MCL 750.82, possession of a firearm during the commission of a felony, MCL 750.227b, and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). He was sentenced to a two-year prison term for the felony-firearm conviction and five years’ probation for the remaining convictions. He appeals as of right. We affirm defendant’s convictions and sentences, but remand for correction of his presentence report. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The testimony at trial established that defendant assaulted a tow truck owner and employee by pointing a pistol at them and telling them to unload his car “or else.” Defendant acknowledged brandishing the weapon and admitted that he was trying to scare the men so that they would remove his vehicle from the tow truck.

Although defendant argues that the evidence was insufficient to support his convictions of felonious assault and felony-firearm, the basis for his argument is that the trial court erred in rejecting his claim that he was legally justified in brandishing a firearm to protect his property. The testimony was clearly sufficient to establish, beyond a reasonable doubt, the elements of felonious assault against both men and the elements of felony-firearm as well. See *People v Avant*, 235 Mich App 499, 505-506; 597 NW2d 864 (1999). Defendant maintains, however, that the assaults were legally justified to defend his property. We disagree. A person is not justified by taking the law into his own hands, and except under extreme circumstances not present here, an individual may not endanger human life to defend against an infringement on bare property rights, especially an infringement that is capable of civil redress. *People v Shaffran*, 243 Mich 527; 220 NW 716 (1928); *People v Doud*, 223 Mich 120; 193 NW 884 (1923). Defendant does not claim, and the evidence did not support, any justification for his actions grounded in a right to defend his personal safety from unjustified aggression. Instead, defendant essentially argues

that anyone who feels aggrieved by the vocational efforts of a tow-truck driver may lawfully discourage those efforts with a firearm and the threat of lethal force. This is not the law, and the trial court properly rejected defendant's claim of justification. *Shaffran, supra*; *Doud, supra*.

Defendant next argues that the trial court erred by failing to delete references to Florida convictions from his presentence report. We agree. When a court finds that challenged information in a presentence report is inaccurate or irrelevant, it must correct or delete the challenged information before sending a copy of the report to the Department of Corrections. MCL 771.14(6); MCR 6.425(E)(2)(a).

In this case, defendant challenged the accuracy of the Florida convictions listed in his presentence report. The trial court determined that the convictions had been set aside and agreed not to consider them at sentencing. Although the trial court corrected the scoring of prior record variable 2 on the sentencing information report, it did not delete the references to the Florida convictions in the "adult history" portion of the presentence report. Because the trial court agreed not to consider this information at sentencing, defendant is entitled to have the Florida convictions deleted from his presentence report and a corrected copy forwarded to the Department of Corrections. Accordingly, we remand for this limited purpose.

Affirmed in part and remanded for correction of the presentence report. We do not retain jurisdiction.

/s/ Peter D. O'Connell  
/s/ Stephen L. Borrello  
/s/ Elizabeth L. Gleicher